



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

March 18, 2003

Ms. Julie B. Ross  
Karger Key Barnes & Springer  
300 West Third Street, Suite 1700  
Fort Worth, Texas 76102

OR2003-1841

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178047.

The City of Mineola Police Department (the "department"), which you represent, received a request for (1) any and all documents, data files, and audio or video recordings relating to any investigations of two named individuals in the past sixty days, and (2) any and all documents, data files, and audio or video recordings relating to any request made to the Wood County District Attorney's office for an investigation of the department and its current or former officers. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have also claimed section 552.022(a) as an exception to disclosure. Section 552.022 does not provide exceptions to the Public Information Act (the "Act"). Rather, it makes certain categories of information expressly public and subject to disclosure under the Act. Section 552.022(a) provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). Upon reviewing the submitted information, we conclude that it consists of a completed investigation. Therefore, as prescribed by section 552.022, the completed investigation must be released unless it is confidential under other law. Section 552.103 is not other law under which information is made confidential. Therefore, you may not withhold the information under section 552.103. However, your remaining claims can be used to withhold section 552.022(a)(1) information.

In this instance, the city argues that the requested information is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You contend that all of the submitted information is confidential under section 261.201 because Child Protective Services ("CPS") is currently investigating the matter. However, the only information you indicate has been reviewed by CPS are the submitted audio tapes. We agree that these audio tapes are subject to section 261.201. In addition, some of the documents appear to have been obtained from CPS. These documents, which we have marked, are likewise subject to section 261.201. Therefore, the submitted audio tapes and the documents we have marked are confidential pursuant to section 261.201 of the Family Code must be withheld under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Because you have not indicated, nor does it appear, that the remainder of the submitted information was used or developed in an investigation of child abuse or neglect, we find the remainder of the information, including the first four pages of the investigation, is not confidential under section 261.201.

Section 552.101 also encompasses the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The doctrine of common-law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.* In Open Records Decision No. 393 (1983), this office concluded that, generally, only the information

which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, because the identifying information in that case was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The submitted information consists of an internal investigation including allegations of moral turpitude. We find that the privacy interest of one individual is implicated in the information. Upon due consideration of the submitted information, we conclude that because the individual's identity is inextricably intertwined with otherwise releasable information, withholding only the identifying information from the requestor would not preserve the victim's common-law right of privacy. Therefore, we conclude that the department must withhold most of the submitted documents in their entirety. However, the first four pages of the submitted information do not contain any information that would identify the individual at issue or that would otherwise implicate the privacy rights of an individual. Therefore, these four pages are not protected under common-law privacy and may not be withheld under section 552.101 and common-law privacy.

We now turn to your section 552.108 argument with regard to the remaining four pages of the submitted information. Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. The submitted information consists of an internal affairs investigation. Section 552.108 does not apply to an internal affairs investigation unless the investigation results in a criminal investigation or prosecution. *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied). Although you do not indicate that the internal affairs investigation resulted in a criminal investigation by the department, you state that you reported criminal conduct to the local sheriff's department and district attorney. We note that where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108).

However, you do not indicate whether the sheriff or district attorney requested that this information be withheld, nor do you indicate that any of the information in the internal affairs investigation file was forwarded to the sheriff or district attorney as part of their investigations. Therefore, we conclude that you may not withhold the first four pages of the submitted information under section 552.108 and you must release them to the requestor. In summary, you must withhold the submitted audio tapes and marked pages under

section 552.101 of the Government Code and section 261.201 of the Family Code. You must withhold most of the remaining information under section 552.101 and common-law privacy. You must release the first four pages, which we have marked, to the requestor.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

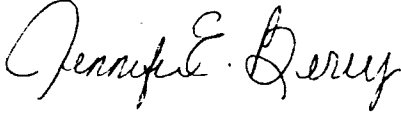
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

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<sup>1</sup> Based on our findings, we need not reach your remaining arguments.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer E. Berry".

Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 178047

Enc: Submitted documents

c: Mr. David Chenault  
The Mineola Monitor  
P.O. Box 210  
Mineola, Texas 75773  
(w/o enclosures)